SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1063

H. CLAY ESPEY, *Petitioner,*

v.

JAMES J. LAUGHLIN, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Hyattsville, Maryland,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

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No.

H. CLAY ESPEY, *Petitioner,*

v.

JAMES J. LAUGHLIN, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To The Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, H. Clay Espey, respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to review the decisions herein of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

None.

JURISDICTION

The grounds on which the jurisdiction of this Court are involved are:

(i) The Court of Appeals by its Deciding Panel's judgment order of November 4, 1964, erroneously rendered a decision in conflict with and refused to follow its prior decision in another case, and failed to give its rules governing finality of its judgments their legal force and effect, and failed to perceive that petitioner appealed upon substantial grounds, and in so doing the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and has so far sanctioned such a departure by the District Court, as to call for an exercise of this Court's power of supervision upon the dismissal of petitioner's Appeal 18,824 as frivolous. (Appdx. 7A) Petitioner appealed upon substantial grounds from the erroneous judgment order of the United States District Court for the District of Columbia dismissing Petitioner's Civil Action 819-64 complaint with prejudice (JA 8) upon respondent's motion to dismiss upon the ground that petitioner's C.A. 819-64 complaint was barred by the one-year statute of limitations. JA 3. Petitioner's C.A. 819-64 complaint, which admittedly stated a valid cause of action or claim for relief (JA 1), was filed April 6, 1964, ten days within the one-year limitation after petitioner's cause of action or claim for relief accrued or arose on April 16, 1963, upon transmission by the Clerk of the Court of Appeals on that date to the District Court of a certified copy of the final decision of the Court of Appeals dismissing respondent's Appeal 17,199 from dismissal of his malicious prosecution of his Civil Action 882-62 against petitioner. (Appdx. 5A, 6A) The District Court also erroneously failed and refused to give the rules of the Court of Appeals governing finality of its decisions their force and effect of law. Neither court held that petitioner's C.A. 819-64 complaint did not state a cause of action or claim for relief.

(ii) Petitioner's petition for rehearing was denied on January 13, 1965, by the Deciding Panel (Appdx. 8A) and also by the Court of Appeals en banc (Appdx. 9A). The Court of Appeals by its order of February 3, 1964, stayed the transmission of its judgment dismissing petitioner's Appeal 18,824 herein until the expiration of the time allowed for this petition. (Appdx. 10A)

(iii) The jurisdiction of this Court is involved under the provisions of 28 U.S.C.A. Sec. 1254 (1).

QUESTIONS PRESENTED

The questions presented by this petition are:

1. Whether the rules of the Court of Appeals governing finality of its decisions have the force and effect of law, and are binding upon the Court of Appeals and the District Court or may be disregarded by them at will.

2. Whether petitioner's admitted cause of action or claims for relief (upon respondent's malicious prosecution without probable cause of a civil action against petitioner and his appeal from dismissal with prejudice thereof) accrued or arose upon the transmission of the certified copy of the Court of Appeals judgment order to the District Court on April 16, 1963, or before such final action.

3. Whether petitioner's complaint filed April 6, 1964, against petitioner upon respondent's said malicious prosecution, was filed ten days within the applicable one-year statute of limitations, and was not barred by such limitation.

4. Whether the District Court erred in dismissing petitioner's complaint as barred by the one-year limitation.

5. Whether the Court of Appeals erred in dismissing as frivolous petitioner's appeal from such District Court dismissal with prejudice, or whether petitioner appealed on substantial grounds.

STATUTES AND RULES INVOLVED

Statutes

Title 28, U. S. Code, Sec. 2101. Supreme Court; time for appeal or certiorari;

"(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree."

Section 12-201, D. C. Code, 1961, Periods (Limitation of actions):

"No action shall be brought . . . for . . . malicious prosecution, . . . after one year from the time when the right to maintain any such action shall have accrued; . . ."

Section 12-301, D. C. Code, 1961 (as amended). Limitation of time for bringing actions.

"Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

" . . .

"(4) for . . ., malicious prosecution, . . .—1year."

Federal Rule of Civil Procedure 6. Time.

"(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. . . . ."

U. S. Court of Appeals for D. C. Circuit Rule 26. Rehearing

"(a) PETITION. A petition for rehearing may be filed with the Clerk when accompanied by proof of service on the adverse party within fifteen days after judgment or decision, . . ."

U. S. Court of Appeals for D. C. Circuit Rule 27. Mandates

"(a) IN CAPITAL CASES. In a capital case a mandate shall issue as of course to the District Court after the expiration of 15 days from the date the judgment is entered, . . .

"(b) GENERALLY. A formal mandate shall not issue in any other case unless specially directed by the Court. If the Court specially directs the issuance of a formal mandate at the time the judgment is entered or within 15 days thereafter, the time of issuance shall be governed by the time conditions set out in paragraph (a) of this rule.

"(c) TRANSMISSION OF OPINION AND JUDGMENT IN LIEU OF MANDATE: ISSUANCE OF MANDATE IF NECESSARY. In the absence of a direction by the Court that a formal mandate issue, it shall suffice for the Clerk to transmit to the proper court (in accordance with the time conditions set out in paragraph (a) of this rule) a copy of the opinion, if any, and a certified copy of the judgment of this Court, . . .

"(d) PETITION FOR REHEARING OPERATES AS STAY. If a petition for rehearing or for modification of judgment be filed within the time fixed by Rule 26, the Clerk shall not transmit a copy of the opinion and certified copy of the judgment, or issue a mandate in the case if same be required by this rule or be directed by the Court, until 3 days after the denial of such petition. If rehearing is granted the judgment shall be vacated.

STATEMENT OF THE CASE

Petitioner's Complaint For Malicious Prosecution against respondent was filed in the United States District Court for the District of Columbia as Civil Action 819-64 on April 6, 1964, ten days within the one-year limitation. (JA 1) The complaint showed the District Court's jurisdiction and stated a cause of action or claim for relief under *Holt* v.

Boyle Bros., 95 U.S. App. D.C. 1, 217 F.-2d 16 (namely: 1. A final judgment of dismissal of a baseless civil action, prosecuted maliciously and without probable cause, resulting in judgment for the defendant therein (respondents Civil Action 882-62 against petitioner), and 2. A final judgment of affirmance which dismissed a baseless, unconscionable appeal from such final judgment (respondent's Appeal 17,199 from C.A. 882-62).)

Respondent, On May 1, 1964, filed his Motion To Dismiss "on the grounds that this action filed as it was on April 6, 1964 is barred by the one-year statute of limitations provided for in Title 12, Sec. 201 [amended Sec. 301] of the D. C. Code relating to actions for malicious prosecutions which requires said actions to be filed within one year." JA 3. Respondent alleged that the orders of the Court of Appeals clearly show that, if petitioner had a cause of action, it expired one year from the denial of re-hearing which was on April 2, 1963. (JA 3-4)

The legal effect of respondent's said motion to dismiss was to admit petitioner's allegations including his allegations that the Court of Appeals in respondent's Appeal 17,199 from the judgment dismissing his Civil Action 882-62 against petitioner

> ". . . issued on April 16, 1963, its judgment finally affirming said dismissal with prejudice"

and that

> ". . . Said judgment of affirmance was filed in this District Court in said Civil Action 882-62 on April 16, 1963, and thereby said Civil Action 882-62 was decided finally against defendant (respondent)."

Under *Holt* v. *Boyle Bros., supra,* the required second element for an action for malicious prosecution of a denied appeal is a finally adjudicated appeal. While respondent's Appeal 17,199 was pending and not finally adjudicated by transmission of the Court of Appeals judgment to the Dis-

trict Court on April 16, 1963, petitioner had no cause of action or claim for relief. Until that time respondent's C.A. 882-62 against petitioner was not finally adjudicated. Petitioner would have been premature if he had filed his action against respondent (C.A. 819-64) before April 16, 1963, as petitioner could not have maintained his action so long as Appeal 17,199 was pending in the Court of Appeals, which pendency continued until April 16, 1963. *Breen* v. *Shatz*, Ky. Ct.App., May 7, 1954, 267 SW2d 941, 41 ALR2d 821.

Petitioner's cause of action or claims for relief did not accrue for action and to start the running of the one-year statute of limitations until respondent's C.A. 882-62 was finally dismissed with prejudice which in view of his appeal 17,199 did not occur until the Court of Appeals' certified copy of its order denying Appeal 17,199 and affirming dismissal with prejudice of respondent's C.A. 882-62 was transmitted by the Court of Appeals to the District Court, and filed in the District Court, both on April 16, 1963.

The District Court's order dismissing petitioner's C.A. 819-64 complaint (JA 8) was based upon respondent's motion to dismiss which was based upon the idea that the one-year limitation "expired one year from the denial of re-hearing (of Appeal 17,199) which was on April 2, 1963." (JA 3-4)

The Court of Appeals' denial of respondent's petition for rehearing of his Appeal 17,199, by its order dated April 2, 1963, could not be a final judgment for at least three (3) days by operation of its Rule 27 (d) which prescribed that "the Clerk shall not transmit a copy of the opinion and certified copy of the judgment . . . until 3 days after the denial of such petition."

The earliest that the Court of Appeals Clerk could legally have transmitted a copy of the Court's judgment denying respondent's Appeal 17,199 and affirming dismissal with prejudice of respondent's C.A. 882-62 was April 5,

1963. If the Clerk had transmitted said judgment on April 5, 1963 (instead of April 16, 1963), the one year statute of limitations would have expired April 5, 1964. As April 5, 1964, was a Sunday, the one-year limitation would not have expired under Federal Rule 6 until Monday, April 6, 1964, on which day petitioner filed his C.A. 819-64 (JA 1).

Petitioner's Appeal 18,824 is not frivolous under the law as established by the Court of Appeals in *Cash* v. *United States*, 104 U.S. App. D.C. 265, at 269, 261 F. 2d 731, where it said of the legal meaning of "frivolous" that

> ". . . It also has established meaning in law, when applied to appeals, of 'manifestly insufficient or futile,' 'without merit and futile.'

and

> ". . . In this sense 'frivolous' means without any realistic chance of success on the merits, without an issue warranting consideration by the appellate court, or without substantiation in the record.

Neither the Court of Appeals not the District Court has held that any of these deficiencies are present in his case. None of these deficiencies are present here. This appeal cannot be held "manifestly insufficient or futile" or "without merit and futile" in view of the admitted allegations of petitioner's C.A. 819-64 complaint. JA. 1. Without a trial petitioner's complaint cannot by mere conclusion be held to be "without any realistic chance of success on the merits." This appeal cannot be held as a matter of fact, law and reason to be "without any issue warranting consideration by the appellate court" in view of the bona fide and substantial issues as to the date when petitioner's cause or claim accrued for action, which petitioner alleged and respondent admitted by his motion was April 16, 1963, where petitioner filed his Civil Action 819-64 on April 6, 1964, ten days within the year limitation.

This Court in *Farley* v. *United States,* 1957, 354 U.S. 521, 1 L. ed. 2d 1529, 77 S.Ct. 1371, held:

> ". . . If the allegations made by petitioner and his counsel are correct then it seems quite clear to us that his appeal cannot be characterized as frivolous.

The District Court erroneously granted respondent's motion to dismiss based on the one-year limitation by its order of June 3, 1934. (JA 8-9)

Petitioner noted his appeal within the thirty days allowed on July 1, 1964. (JA 15)

Petitioner's Appeal 18,824 herein was based upon the substantial propositions that the District Court erred in failing to give the Court of Appeals Rules 26 and 27 their force and effect of law retaining in that Court jurisdiction over respondent's Appeal 17,199 until the Clerk on April 16, 1963, transmitted to the District Court and that Court entered on its docket in C.A. 882-64 the certified copy of the Court of Appeals order of February 21, 1963, in Appeal 17,-199 therefrom affirming dismissal of C.A. 882-62, with the result that petitioner's cause or claim accrued on April 16, 1963, and not on April 2, 1963, as claimed by respondent in his C.A. 819-64 Motion To Dismiss. (JA 2; Appdx. 6A).

On October 7, 1964, respondent filed in petitioner's Appeal 18,824 from dismissal of his C.A. 819-64 respondent's Motion For Summary Affirmance Or To Dismiss This Appeal As Frivolous. (Appdx. 1A).

On November 4, 1964, the Court of Appeals dismissed petitioner's Appeal 18,824 as "frivolous." (Appdx. 7A).

Long ago, this Court laid down as law that a duly authorized rule of court has the force of law, and is binding upon the court as well as upon parties to an action, and cannot be dispensed with to suit the circumstances of any particular case. *Rio Grande Irrig. & Colonization Co.* v. *Gildersleeve,* 174 U.S. 603, 19 S.Ct. 761, 43 L. ed. 1103.

The Court of Appeals erred in dismissing petitioner's Appeal 18,824 as frivolous by failing and refusing to give its Rules 26 and 27 the force of law and holding that petitioner's C.A. 819-64 against respondent accrued more than one year prior to the filing thereof on April 6, 1964. By the force of said Rules 26 and 27 the Court of Appeals retained jurisdiction of Appeal 17,199 until April 16, 1963, and its affirmance of respondent's Appeal 17,199 against him did not become final until April 16, 1963. Consequently petitioner's cause or claim did not accrue for his action for malicious prosecution until that date. When filed on April 6, 1964, it was filed ten days short of and within the one year limitation.

Respondent shifted from his ground asserted in his motion in the District Court to dismiss petitioner's C.A. 819-64 complaint on the ground that it was barred by the one-year statute of limitations because petitioner's cause or claim accrued on April 2, 1963, the date of the Court of Appeals order denying respondent's petition for rehearing of dismissal of his Appeal 17,199 (JA 3-4), to the ground stated in his motion in the Court of Appeals to dismiss petitioner's Appeal 18,824 that "the statute of limitations began to run on February 22, 1963, the day after this court entered its [Appeal 18,824] judgment on February 21, 1963, (Appdx. 3A).

CONCLUSION

Petitioner submits that the Court of Appeals and the District Court grievously so far departed from the accepted and usual course of judicial proceedings as to afford ample grounds for, and to call for, an exercise of this Court's power of supervision. Petitioner further submits that the dismissal of petitioner's appeal and of his complaint, on the grounds stated, is greatly in error, and constitutes a violation of "Equal Justice Under Law" for failure of the courts below to recognize that petitioner has

stated a cause of action or claim for relief under the law as laid down in *Holt* v. *Boyle Bros., supra,* which has never been changed.

Petitioner prays and submits that the Court should grant the writ of certiorari and reverse the judgments below, so that petitioner may have his complaint construed so as to do substantial justice in accordance with Federal Civil Rule 8(f).

Respectfully submitted,

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Counsel for Petitioner
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APPENDIX

(Filed Oct. 7, 1964)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,824

H. CLAY ESPEY, *Appellant*

v.

JAMES J. LAUGHLIN, *Appellee*

Motion for Summary Affirmance or to Dismiss This Appeal as Frivolous

The appellant has filed his "brief" in this cause. We believe to require the appellee to file a printed brief and to consume the court's time on this absurd appeal would be a travesty and we are thus asking this court to summarily affirm or to dismiss the appeal.

This frivolous appeal seeks to ask this court to review:

1. The decision of this court previously rendered in *Laughlin* v. *Espey*, decided February 21, 1963, 115 U.S. App. D.C. 80, 317 F. 2d 144. The appeal seeks to have this court modify and change its language, the appellant contending that he has been "besmirched" by the opinion and that the opinion of the court of appeals shows a "failure to comprehend, or ignorance of, the facts and applicable law".

2. The appeal seeks to review an order dismissing the complaint for malicious prosecution, when the record clearly shows that the alleged cause of action not only did not exist but was clearly barred by the statute of limitations.

This court has many weighty matters before it, and it is apparent that this litigious appellant, who is unwilling

to accept an unfavorable order of court, will continue to deluge this court with frivolous appeals, unless this court invokes its plenary power and affirms the judgment or dismisses the appeal. See *Pacific West Bound Conference* v. *U. S.*, 332 F. 2d 49 (1964).

The appellant filed a complaint against the appellee on April 6, 1964, alleging malicious prosecution and asserted as his cause of action that appellant had filed a malicious prosecution suit against him which was dismissed and that appellee then frivolously appealed to this court from the action of the District Court in dismissing the appellee's suit for malicious prosecution against appellant, and that this court's ruling in *Laughlin* v. *Espey*, 317 F. 2d 144 terminated favorably to appellant.

The appellee filed a motion to dismiss joint appendix 3 and 4, and attached thereto as exhibits the judgment of this court entered February 21, 1963, *Laughlin* v. *Espey*, as Exhibit No. 1 and, attached as Exhibit No. 2 the order of this court entered on April 2, 1963, denying the petition for rehearing filed by appellee Espey in that appeal.[1]

We think that we need not discuss at all the attempt by the appellant Espey to request this court in this appeal to re-write its prior appeal in *Laughlin* v. *Espey*, (supra). His brief from pages 19 to 24, containing its usual scurilous discourse outside the record is directed to this end and concludes with the impudent request that the court change its prior opinion in this cause. There is no jurisdiction in this court for such a presumptious request and it only demonstrates the utter frivolousness of the appeal.

The record in the case discloses that any alleged cause of action was barred by the statute of limitations under the provisions of Title 12, Section 201 of the D. C. Court. Malicious prosecution actions, which are not favored by

[1] It is significant to note that the appellant, H. Clay Espey, has omitted these exhibits from his joint appendix but we are attaching them hereto for the court's convenience.

the courts, have a one year statute of limitations. Assuming for the purpose of argument, as appellee's motion to dismiss did in the District Court, that the complaint stated a cause of action, the statute of limitations began to run on February 22, 1963, the day after this court entered its judgment on February 21, 1963, in *Laughlin* v. *Espey*, (supra). (See Plaintiff's Exhibit No. 1 attached.) This was a final judgment under this Court's Rule 25. Giving the appellant Espey the benefit of all time periods, the statute of limitations would have commenced running on April 3, 1963, one day after the court denied the petition for rehearing in *Laughlin* v. *Espey*.

Thus, as the District Court ruled, the appellant Espey secured a favorable termination of the appeal on February 23, 1963, and his complaint for malicious prosecution against the appellee filed on April 6, 1964, is almost six months beyond the applicable statute of limitations. Giving the appellant Espey the benefit of all time periods and assuming that a petition for rehearing in any way affected the favorable termination of the appeal decided on February 21, 1963, the complaint was four days late, since rehearing was denied on April 2, 1963.

Appellant's argument that the statute of limitations did not run until April 16, 1964 because the clerk of this court did not administratively transmit the mandate of this court to the District Court is wholly frivolous. This court's judgment terminated the litigation favorably and the action of the clerk in transmitting the judgment in no way delayed or affected the finality of the judgment.

The case of *Breen* v. *Shatz*, 267 SW 2d 942 cited by appellant is wholly inapplicable because in that case the appeal was pending, no judgment or decision had been rendered as in this case, and so the litigant had not yet secured a favorable termination of his appeal.

Of course, it is also apparent that this court in rendering the opinion it did in *Laughlin* v. *Espey*, (supra) did not hold

the appeal to be frivolous, and this constitutes an additional basis for the trial judge's dismissal of the complaint.

There must be an end to everything, and we suggest the time to end this litigious appellant's constant harrassment of the same issues has come to pass. In *Laughlin* v. *Espey*, (supra) this court said:

> "after the law suit was concluded instead of laying down their arms and accepting the judgment of the court appellant and appellee decided to attack each other."

The appellant Espey continues the attack and continues to deluge the clerk's office with pleadings and frivolous appeals. To give an example, he now has two other malicious prosecution appeals pending in this court, and heretofore this court has disposed of the following frivolous appeals prosecuted by the appellant in proper person or by nominees for the appellant:

1. *Espey* v. *Clifford, et al.*, No. 17099
2. *Leoffler, et al.* v. *Clifford*, No. 16292
3. *Midget* v. *Clifford, et al, Misc.*, 1723
4. *Midget* v. *Clifford, et al.*, No. 16790
5. *Midget* v. *Ahern*, No. 18370
6. *Leoffler* v. *Clifford and Ahern*, No. 18293.

If we were in the State of California, we would have relief by the legislature, since they have passed a vexatious litigant legislation, but in the absence of such legislation, this court should invoke its plenary power to affirm the judgment without requiring the appellee to file a printed brief and without wasting this court's time with oral argument of such ludicrous power for Summary Affirmance and the concomitant right to dismiss appeals are *John* v. *Gibson*, 270 F. 2d 33 and *McMillan* v. *Taylor*, 160 F. 2d 217.

We invite the court's attention to the brief filed by the appellant and, while we feel it should be stricken because

of its characteristic attack upon the court similar to the brief filed by the appellant Espey in *Golden Commissary* v. *Shipley*, No. 15579, which was striken by this court, we will not burden this court with such a motion.

We do, however, ask this court to enter an order affirming the judgment and/or dismissing the appeal. We do this knowing that if we are successful in this application we will be met with the usual petition for rehearing en banc but at least the end will be in sight.

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Albert J. Ahern, Jr.
900 Seventeenth Street, N.W.
Washington, D. C.

Attorney for Appellee

(Filed Feb. 21, 1963)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1962

Civil 382-62

No. 17,199

JAMES J. LAUGHLIN, *Appellant*,

v.

H. CLAY ESPEY, *Appellee*.

Appeal from the United States District Court for the District of Columbia.

Before: FAHY, BASTIAN and WRIGHT, Circuit Judges.

Judgment

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the order of the District Court appealed from in this cause be, and it is hereby, affirmed, without costs to either party.

PER CURIAM.

Dated: February 21, 1963.

Circuit Judge Fahy concurs in the result.

(Filed April 2, 1963)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1962

No. 17,199

JAMES J. LAUGHLIN, *Appellant,*

v.

H. CLAY ESPEY, *Appellee.*

Before: FAHY, BASTIAN AND WRIGHT, Circuit Judges, in Chambers.

Order

On consideration of appellant's motion for leave to file petition for rehearing in typewritten form, and it appearing that no opposition to the motion has been filed, and it further appearing that appellant's petition for rehearing was submitted with the motion, it is

ORDERED by the court that the motion be granted and the Clerk is hereby directed to file the petition for rehearing in this case, and upon consideration of the petition for rehearing, it is

FURTHER ORDERED by the court that the petition for rehearing is hereby denied.

PER CURIAM.

Dated: Apr. 2, 1963

(Filed Nov. 4, 1964)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1964

Civil 819-64

No. 18,824

H. CLAY ESPEY, *Appellant,*

v.

JAMES J. LAUGHLIN, *Appellee.*

Before: BAZELON, Chief Judge, WILBUR K. MILLER, Senior Circuit Judge, and Danaher, Circuit Judge.

Order

This case came on for hearing on appellee's motion for summary affirmance or to dismiss this appeal as frivolous, and said motion was argued by counsel. On consideration whereof, it is

ORDERED by the court that this appeal is dismissed as frivolous.

Appellee's pending motion for extension of time to file brief is dismissed as moot.

PER CURIAM.

Dated: Nov. 4, 1964

(Filed Jan. 13, 1965)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1964

Civil 819-64

No. 18,824

H. CLAY ESPEY, *Appellant,*

v.

JAMES J. LAUGHLIN, *Appellee.*

Before: BAZELON, Chief Judge, WILBUR K. MILLER, Senior Circuit Judge, and DANAHER, Circuit Judge, in Chambers.

Order

On consideration of appellant's petition for rehearing, it is

ORDERED by the Court that appellant's aforesaid petition is denied.

PER CURIAM.

Dated: Jan. 13, 1965

(Filed Jan. 13, 1965)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1964

Civil 819-64

No. 18,824

H. CLAY ESPEY, *Appellant*,

v.

JAMES J. LAUGHLIN, *Appellee*.

Before: BAZELON, Chief Judge, and FAHY, WASHINGTON, DANAHER, BASTIAN, BURGER, WRIGHT, and MCGOWAN, Circuit Judges, in Chambers.

Order

On consideration of appellant's petition for rehearing *en banc*, it is

ORDERED by the Court *en banc* that appellant's aforesaid petition is denied.

PER CURIAM.

Dated: Jan. 13, 1965

(Filed Jan. 16, 1965)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1963.

Civil 819-64

No. 18,824

H. CLAY ESPEY, *Appellant,*

v.

JAMES J. LAUGHLIN, *Appellee.*

Appellant's Motion for Stay Pending Application for Certiorari

Comes now appellant and moves the Court, under the authority of this Court's Rule 27 (e), to stay the mandate or the transmission of a certified copy of the judgment of this Court dismissing this appeal as frivolous to the District Court below pending appellant's application to the Supreme Court of the United States for certiorari. Appellant as counsel pro se represents that he intends to prepare and file a petition for certiorari and that such a petition will be filed within the period allowed or permitted by law. Appellant prays that the stay be for the period permitted by law.

Respectfully submitted,

H. CLAY ESPEY,
219 Southern Building
1425 H Street, N. W.,
Washington, D. C., 20005,
Attorney Pro Se.

This Motion is hereby granted.

/s/ DLB
Chief Judge

Dated Feb. 3, 1965